

CESAS-OP-F
200005090

SUBJECT: Regional Permit No. 90

Effective Date: May 3, 2002

Expiration Date: May 3, 2007

DEPARTMENT OF THE ARMY
REGIONAL PERMIT FOR
PRIVATE SINGLE FAMILY NON-COMMERCIAL RECREATIONAL PONDS
(LESS THAN FIVE ACRES IN SIZE)
WITHIN THE GEOGRAPHIC LIMITS OF GEORGIA
SAVANNAH DISTRICT

DESCRIPTION OF THE REGIONAL PERMIT: On the recommendation of the Chief of Engineers, pursuant to Section 404 of the Clean Water Act (33 USC 1344), authority is hereby given to discharge dredged and/or fill material incidental to the construction of private single family, non-commercial, recreational ponds (less than five acres in size) in non-tidal waters of the United States, in the State of Georgia. This Regional Permit **cannot** be used for stormwater detention and/or retention ponds, sediment ponds, irrigation ponds, or ponds for wastewater treatment or waste disposal. This Regional Permit **cannot** be used for multiple ponds on a single tract of land. Individual project impacts will total no more than two acres of jurisdictional waters of the US and/or 500 linear feet of intermittent or perennial stream. The impact area includes any waters of the US (waters) impacted by dams, berms, impounded areas, and any associated fill and/or sidecast. Also included would be those waters impacted by excavation, where the excavation is determined to be a regulated discharge. This Regional Permit (RP) is not considered to supersede or otherwise modify applicable Nationwide Permits published in the January 15, 2002, Federal Register, Vol. 67, No. 10, Pages 2020-2095 (67 FR).

I. GENERAL CONDITIONS

1. The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).
2. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. No activity may occur in a State designated primary or secondary trout stream. No activity may occur in or directly adjacent to waters designated on the Georgia 303(d) list. Applicants are

required to certify that the water to be impacted is not a listed (state impaired) water. The Environmental Protection Agency maintains a list of state impaired waters on their "Surf Your Watershed" website (www.epa.gov/surf/).

4. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

5. Endangered Species.

a. No activity is authorized under this RP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Prospective permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the DE that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed threatened or endangered species or designated critical habitat, the notification must include the name(s) of the threatened or endangered species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the US Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), the DE may add species-specific regional endangered species conditions to this RP.

b. If a proposed project would involve the impounding of an intermittent or perennial stream associated with the Etowah River, Flint River, or Chattahoochee River drainage basins, surveys for Federally listed fish and mussel species must be provided to this office as well as to the appropriate USFWS office at the time of the pre-construction notification (PCN) submittal.

c. Authorization of an activity by this RP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act (ESA). In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS on their web pages at <http://www.fws.gov/r4gafo> and http://www.nmfs.gov/prot_res/esahome.html, respectively.

6. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the NRHP, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation

Office and the NRHP (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the NRHP, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

7. The applicant will coordinate with the Safe Dams Program if the dam exceeds 15 feet in height. For all dams below 25 feet in height, the applicant will coordinate with any local jurisdictions which maintain ordinance control over the design for small dams below the threshold exercised by the Georgia Safe Dams Program. In both instances, the applicant will provide the DE with evidence of this coordination. (Safe Dams can be contacted at the Georgia Department of Natural Resources, Environmental Protection Division, Safe Dams Program, 4240 International Parkway, Atlanta, Georgia 30354, 404-362-2678.)

8. If the applicant intends to withdraw 100,000 gallons/day or more from the proposed pond, then it would be necessary to contact the Georgia Department of Natural Resources, Environmental Protection Division, concerning a surface water withdrawal permit at the following website: www.dnr.state.ga.us.

9. No activity may occur in the proximity of a public water supply intake.

10. No activity may occur in areas of concentrated shellfish populations, including freshwater mussels.

11. No activity may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharge must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

12. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

13. The overflow must be constructed so that normal flows are maintained even in dry weather (e.g., location, capacity, and flow rates). Normal flow rates may be zero in some cases. The structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to pre-construction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond pre-construction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site.

14. Adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

15. Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

16. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.
17. A pre-construction notification is required for use of this RP. (Refer to Enclosures 1 through 3 and Section II, 2 "Contents of Notification," on page 5.) Impacts to wetlands must be calculated and reported in acres. Impacts to intermittent and perennial streams (streams) must be calculated separately from wetland impacts, and reported in linear feet of stream channel.
18. Compensatory mitigation is required in connection with any project that impacts more than 1/10 acre of wetlands or more than 100 linear feet of stream. Projects will be mitigated within the same watershed or an adjacent watershed within the same eco-region and according to the Savannah District, Corps of Engineers, Compensatory Standard Operating Procedures for impacts to streams and wetlands, where appropriate. No more than 50% of the compensatory mitigation for most projects impacting more than 200 linear feet of stream shall be in the form of preservation. In-kind mitigation will normally be required for projects that would impact more than 200 linear feet of stream. In-kind mitigation includes suitable establishment of streamside buffers, stream restoration, and/or use of commercial stream mitigation bank or in-lieu fee stream bank.
19. This RP cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank, unless that project's purpose is to enhance the mitigation site or bank. An individual permit application would be required for these projects.
20. All work conducted under this RP shall be located, outlined, designed, constructed and operated in accordance with the minimal requirements as contained in the Georgia Erosion and Sedimentation Control Act of 1975, as amended. Utilization of plans and specifications as contained in "Manual for Erosion and Sediment Control, (Latest Edition)" published by the Georgia Soil and Water Conservation Commission or their equivalent will aid in achieving compliance with the aforementioned requirements. The latest edition of the manual can be accessed at www.gaswcc.org.
21. Projects authorized under this RP, but not commenced before the expiration date, must be re-coordinated.
22. Projects commenced but not completed within the specified construction period must be specifically extended.
23. Use of this RP is prohibited in waters of the United States that presently support anadromous fish, or in those waters that previously supported such fish and where restoration of fish migrations and populations is possible. The established limits for these waters are depicted in Enclosures 4 and 5, and include adjacent and tributary waters located within 1000 feet of these identified waters.
24. This RP cannot be used in conjunction with any Nationwide Permits in order to enlarge the project size.

25. That the District Engineer or their authorized representative(s) or designee(s) be allowed to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

26. That an activity authorized to a permittee under this Regional Permit may not be transferred to a third party without prior written notice and approval by the District Engineer, requiring either the transferee's written agreement to comply with all terms and conditions of the Regional Permit and the permittee's authorization for the activity issued under the permit or by the transferee subscribing to an authorization issued to them under the permit and thereby agreeing to comply with all terms and conditions of the Regional Permit and their authorization. In addition, if a permittee's interests authorized herein are transferred by conveyance or realty, the deed shall reference the permittee's authorization and the Regional Permit and the terms and conditions specified herein, and their authorization under this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

27. That the Savannah District Engineer may determine that an Individual Permit application is required on a case-by-case basis if he feels it is in the public interest.

II. NOTIFICATION REQUIREMENTS

1. Timing. A pre-construction notification (PCN) is required for use of this RP and must be submitted as early as possible. The DE must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the DE will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the DE. The prospective permittee shall not begin the activity until notified in writing by the DE that the activity may proceed under the RP.

2. Contents of Notification: The notification must be in writing and include the following information:

a. A completed copy of Enclosure 1, "Pre-Construction Notification Form";

b. Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any Nationwide Permit(s), other regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity;

c. The PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site.

There may be some delay if the Corps does the delineation;

d. Plan and section view drawings of the pond showing the dimensions of the dam and pond size, the depth of the pond, the acres of wetlands to be filled, the acres of wetlands to be flooded, the linear feet of stream that would be filled or excavated, and the linear feet of stream that would be impounded;

e. A statement detailing why further reduction of impacts on the aquatic ecosystem is not practicable;

f. If the project would impact more than 1/10 acres of wetlands or 100 feet of stream, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required. For site specific mitigation plans, sufficient information must be included to document that the proposed mitigation would adequately compensation for all wetland/stream impacts. Plans that propose use of an approved commercial mitigation bank or use of in-lieu-fee banking must also document that the mitigation (i.e., credit) would compensate for all wetland/stream impacts;

g. The PCN must include a maintenance plan (in accordance with State and local requirements, if applicable);

h. For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work;

i. For activities that may affect historic properties listed in, or eligible for listing in, the NRHP, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property;

j. Where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements;

k. The PCN must include the distance to the nearest public water intake structure.

III. AGENCY COORDINATION

The DE will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the RP and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For proposed ponds that would impact more than 1/10 acre of waters of the United States or

100 feet of intermittent stream or any length of perennial stream, the DE will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the US Fish and Wildlife Service, State natural resource or water quality agency, the Environmental Protection Agency, the State Historic Preservation Office, and, if appropriate, the National Marine Fisheries Service. These agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the notification. The DE will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The DE will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

III. FURTHER INFORMATION

1. Congressional Authorities: Authorization to undertake the activities described above are pursuant to Section 404 of the Clean Water Act (33 USC 1344).

2. Limits of this authorization:

a. This Permit does not obviate the need to obtain other Federal, State or local authorizations required by law.

b. This Permit does not grant any property rights or exclusive privileges.

c. This Permit does not authorize injury to the property or rights of others.

d. This Permit does no authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this Permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public's interest.

c. Damages to person, property or to other permitted or unpermitted activities or structures caused by the activity authorized by this Permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension or revocation of this

Permit.

4. Reevaluation of Permit Decision. The US Army Corps of Engineers may reevaluate its decision on any activity authorized by a Regional Permit at any time the circumstances warrant. Circumstances that would require a reevaluation include, but are not limited to, the following:

- a. The permittee's failure to comply with the terms and conditions of the Permit.
- b. The information provided by the permittee in support of his Permit application proves to be false, incomplete or inaccurate.
- c. Significant new information surfaces which the US Army Corps of Engineers did not consider in reaching the original public's interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification and revocation procedures contained in 33 CFR 325.7 or enforcement procedures provided in 33 CFR 326.4 and 326.5. The reference enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of his Permit authorizations and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by the US Army Corps of Engineers, and if the permittee fails to comply with such a directive, the US Army Corps of Engineers may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

This Regional Permit becomes effective on May 3, 2002, when the Federal official, designated to act for the Secretary of the Army, has signed below.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Roger A. Gerber
Colonel, US Army
District Engineer

Date

5 Encls

1. Pre-construction Notification Form
2. Sample Plan Drawing
3. Sample Elevation Drawing
4. Description of Rivers Supporting Anadromous Fish Habitat
5. Map of Rivers Supporting Anadromous Fish Habitat

